

REMARKS

Applicant has carefully reviewed the Office Action of November 3, 2003 and offers the following remarks to accompany the amendments presented above.

Initially, claims 1-7 and 13-20 were rejected under 35 U.S.C. § 112 as being indefinite. Applicant herein amends the claims to delete the putatively ambiguous "optionally" language. Applicant has substituted language that the receipt is generated upon request of the customer. No new matter is added.

Applicant further amends claim 13 to clarify that there are two sensors claimed. One is in the fuel dispensing station and one is in the transaction delivery station.

Applicant requests withdrawal of the § 112 rejection of claims 1-7 and 13-20 at this time.

Claims 1-7, 13-15, 19, and 20 were rejected under 35 U.S.C. § 102(e) as being anticipated by Nusbaumer et al. (hereinafter "Nusbaumer"). Applicant respectfully traverses. For a reference to be anticipatory, the reference must show each and every claim element. Further, the elements of the reference must be arranged as claimed. MPEP § 2131.

As amended, Applicant has clarified that the customer is a living customer associated with the vehicle. This is not shown by the reference. The Patent Office effectively admits this in its "Response to Arguments" section of the Office Action (see p. 5 of the Office Action of November 3, 2003). Specifically, the Patent Office identifies a railroad or company that receives the print out from the central data terminal 150 as the customer. By amending the claim to recite that it is a living customer, the corporate customer identified by the Patent Office is excluded. Applicant intended the claim to cover the instance where a person (i.e., the living customer) pays for the fuel and receives the receipt upon request. The person may pay using a corporate card, but the person is the customer, not the corporation actually paying for the event. As explained in the previous response, the living customer does not receive the print out from Nusbaumer's central data terminal 150, and thus the claim element is not shown by the reference.

Further, by eliminating the "optionally" language, Applicant clarifies that "delivering a transaction accounting associated with the fueling transaction to the customer" is a required element. Applicant requests that this element be given the patentable weight to which it is entitled.

Likewise, with respect to claim 3, the elimination of the term "optionally" causes the element "inputs said indicia at said separately located transaction accounting delivery station to

obtain a transaction accounting" to be a required element. Applicant requests that this element be given the patentable weight to which it is entitled. Since this element is not shown by the reference, the reference does not anticipate this claim.

Likewise with respect to claim 5, the elimination of the term "optionally" causes the element "receives a transaction accounting in response to positioning customer's vehicle proximate to said transaction accounting delivery station" to be a required element. Applicant requests that this element be given the patentable weight to which it is entitled. Since the element is not shown by the reference, the reference does not anticipate this claim.

With respect to claim 13, the Patent Office opines that the reference shows a sensor because a computer has a sensor such as a keyboard that responds to physical stimulus. Applicant respectfully traverses. Independently of whether a keyboard is a sensor, the claim recites that the second sensor (i.e., the one in the transaction accounting delivery station) is configured to detect the presence of a customer vehicle. Nothing in the keyboard of terminal 150 detects the presence of the customer vehicle. Since the sensor of the reference does not show the claim element, the reference does not anticipate the claim.

Claims 15-18 were rejected under 35 U.S.C. § 103 as being unpatentable over Nusbaumer. Applicant respectfully traverses. For the Patent Office to establish *prima facie* obviousness, the Patent Office must show where each and every claim element is located. MPEP § 2143.03. Further, if a modification is required to make the reference show a claim element, the Patent Office is required to present objective evidence as to where the motivation to modify the reference is located. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999).

While the Patent Office has stated that it takes Official Notice that tokens and biometric sensors are old, the Patent Office has presented no objective evidence as to why Nusbaumer would be modified to include such components. The Patent Office merely provides the unsupported statement "it would have been obvious . . . to prevent fraudulent use of the system." This statement is not supported by the requisite objective evidence, and therefore the rejection is not proper.

Even if the Patent Office had provided the requisite objective evidence as to why it would have been obvious to modify Nusbaumer, the reference still does not show the receipt being provided to the living customer associated with the vehicle element. Since the reference does not show a claim element and there is no suggestion to modify the reference to include the claim

element, the Patent Office has not established *prima facie* obviousness. Applicant requests withdrawal of the § 103 rejection at this time.

In light of the foregoing, Applicant requests reconsideration of the rejection and claim allowance at the Examiner's earliest convenience. Specifically, the reference does not show the living customer getting the receipt from a central transaction accounting delivery station. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:



Steven N. Terranova
Registration No. 43,185
P.O. Box 1287
Cary, NC 27512
Telephone: (919) 654-4520

Date: January 5, 2004
Attorney Docket: 2400-370

CERTIFICATE OF TRANSMISSION	
I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:	
Examiner: <u>Gort, Elaine</u> Art Unit: <u>3627</u> Fax: <u>703-872-9306</u>	
<u>Kelly Farrow</u>	Name of Sender
<u>[Signature]</u>	Signature
<u>1/5/04</u>	Date of Transmission